

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANTE L. GRAF,

Defendant.

Case No. 13-CR-54-JPS

ORDER

On October 22, 2020, Defendant filed a motion for compassionate release. (Docket #53). Federal Defender Services ("FDS") informed the Court that it would be filing a supplement on behalf of Defendant, (Docket #56), however, on December 7, 2020, FDS filed a motion on Defendant's behalf requesting that the Court appoint counsel to represent Defendant, (Docket #60). The Court ordered that the Government respond before the Court would act on the motion to appoint counsel. (Docket #61). On January 7, 2021, the Government filed a response. (Docket #64). Defendant also filed multiple addendums and updates. (Docket #55, #59, #67, #69, #74, #75, #77). On May 3, 2021, after reviewing these submissions, the Court denied Defendant's motion for compassionate release. Defendant then initiated an appeal of the Court's order; this appeal remains pending. On August 17, 2021, Defendant filed a letter requesting that the Court reconsider its order denying compassionate release. The Court will deny this request.

The Court need not repeat the bulk of the background facts in Defendant's case; they may be found in the Court's May 3, 2021 order denying compassionate release to Defendant. (Docket #78 at 1-3). Relevant to Defendant's present request are the following facts. Since Defendant filed

his motion for compassionate release in October 2020, the Delta variant of the COVID-19 disease has spread across the country. The Delta variant is known to “cause[] more infections and spread[] faster than early forms of SARS-CoV-2.”¹ Thankfully though, “[v]accines in the US are highly effective, including against the Delta variant.”²

Defendant is currently detained at Federal Correctional Institution Beckley (“FCI Beckley”) in Beaver, West Virginia. According to Defendant, the Delta variant has entered FCI Beckley. (Docket #89 at 1). As of August 23, 2021, FCI Beckley reports that one inmate and no staff members have active cases of COVID-19.³ No deaths have been reported, and 196 inmates and 89 staff have recovered from the virus.⁴ Further, FCI Beckley is reporting that 191 of its staff and 1,006 of its inmates have been *fully* vaccinated.⁵ The Government submitted an immunization record, which indicates that Defendant received a first dose of the Pfizer COVID-19 vaccine on January 21, 2021, (Docket #72); the Government also noted that it expected Defendant would soon be fully vaccinated, (Docket #70). Defendant, however, refuted the accuracy of this record and stated that he refused the vaccine; he submitted a consent form reflecting his refusal. (Docket #75).

¹Ctrs. for Disease Control and Prevention, *Delta Variant: What We Know About the Science*, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (last visited Aug. 23, 2021).

²*Id.*

³Fed. Bureau of Prisons, COVID-19 Coronavirus, <https://www.bop.gov/coronavirus/> (last visited Aug. 23, 2021).

⁴*Id.*

⁵*Id.*

On July 21, 2021, the Seventh Circuit issued an opinion stating the following:

Section 3582(c)(1)(A) was enacted and amended before the SARS-CoV-2 pandemic, and it will continue to serve a beneficent function long after the pandemic ends. But for the many prisoners who seek release based on the special risks created by COVID-19 for people living in close quarters, vaccines offer relief far more effective than a judicial order. A prisoner who can show that he is unable to receive or benefit from a vaccine still may turn to this statute, but, for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an “extraordinary and compelling” reason for immediate release.

United States v. Broadfield, 5 F.4th 801, 803 (7th Cir. 2021).

After rigorous and thorough evaluation, the Food and Drug Administration (“FDA”) has approved the Pfizer-BioNTech COVID-19 vaccine for all individuals 16 years of age and older.⁶ Other vaccines, including the Moderna vaccine, have been approved for emergency use since late 2020, with great success.⁷ These vaccines have been very effective in protecting against severe disease resulting from COVID-19. The vaccine for the COVID-19 virus is available to Defendant, and he refused it. The FDA’s recent approval also suggests that all inmates will be vaccinated. Whether the Bureau of Prisons will require inmates to be vaccinated remains to be seen, but, at this juncture, the Court will not allow Defendant

⁶FDA News Release, U.S. Food & Drug Admin., FDA Approves First COVID-19 Vaccine (Aug. 23, 2021), <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>.

⁷See U.S. Food & Drug Admin., Moderna COVID-19 Vaccine (updated Aug. 18, 2021), <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine>.

to benefit from his decision to refuse a safe and effective precaution against the COVID-19 virus.

Defendant has not proffered an extraordinary and compelling reason warranting his release, and the Court will deny Defendant's request to reconsider.

Accordingly,

IT IS ORDERED that Defendant Dante L. Graf's request for reconsideration (Docket #89) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 27th day of August, 2021.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge